

# Bath & North East Somerset Council

MEETING: **Development Control Committee**

MEETING DATE: **8th April 2015**

AGENDA  
ITEM  
NUMBER

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RESPONSIBLE OFFICER: Mark Reynolds – Group Manager (Development Management) (Telephone: 01225 477079)

TITLE: **APPLICATIONS FOR PLANNING PERMISSION**

WARDS: ALL

BACKGROUND PAPERS:

**AN OPEN PUBLIC ITEM**

## BACKGROUND PAPERS

List of background papers relating to this report of the Group Manager, Development Management about applications/proposals for Planning Permission etc. The papers are available for inspection online at <http://planning.bathnes.gov.uk/PublicAccess/>.

- [1] Application forms, letters or other consultation documents, certificates, notices, correspondence and all drawings submitted by and/or on behalf of applicants, Government Departments, agencies or Bath and North East Somerset Council in connection with each application/proposal referred to in this Report.
- [2] Department work sheets relating to each application/proposal as above.
- [3] Responses on the application/proposals as above and any subsequent relevant correspondence from:
  - (i) Sections and officers of the Council, including:
    - Building Control
    - Environmental Services
    - Transport Development
    - Planning Policy, Environment and Projects, Urban Design (Sustainability)
  - (ii) The Environment Agency
  - (iii) Wessex Water
  - (iv) Bristol Water
  - (v) Health and Safety Executive
  - (vi) British Gas
  - (vii) Historic Buildings and Monuments Commission for England (English Heritage)
  - (viii) The Garden History Society
  - (ix) Royal Fine Arts Commission
  - (x) Department of Environment, Food and Rural Affairs
  - (xi) Nature Conservancy Council
  - (xii) Natural England
  - (xiii) National and local amenity societies
  - (xiv) Other interested organisations
  - (xv) Neighbours, residents and other interested persons
  - (xvi) Any other document or correspondence specifically identified with an application/proposal
- [4] The relevant provisions of Acts of Parliament, Statutory Instruments or Government Circulars, or documents produced by the Council or another statutory body such as the Bath and North East Somerset Local Plan (including waste and minerals policies) adopted October 2007

### **The following notes are for information only:-**

- [1] "Background Papers" are defined in the Local Government (Access to Information) Act 1985 do not include those disclosing "Exempt" or "Confidential Information" within the meaning of that Act. There may be, therefore, other papers relevant to an application which will be relied on in preparing the report to the Committee or a related report, but which legally are not required to be open to public inspection.

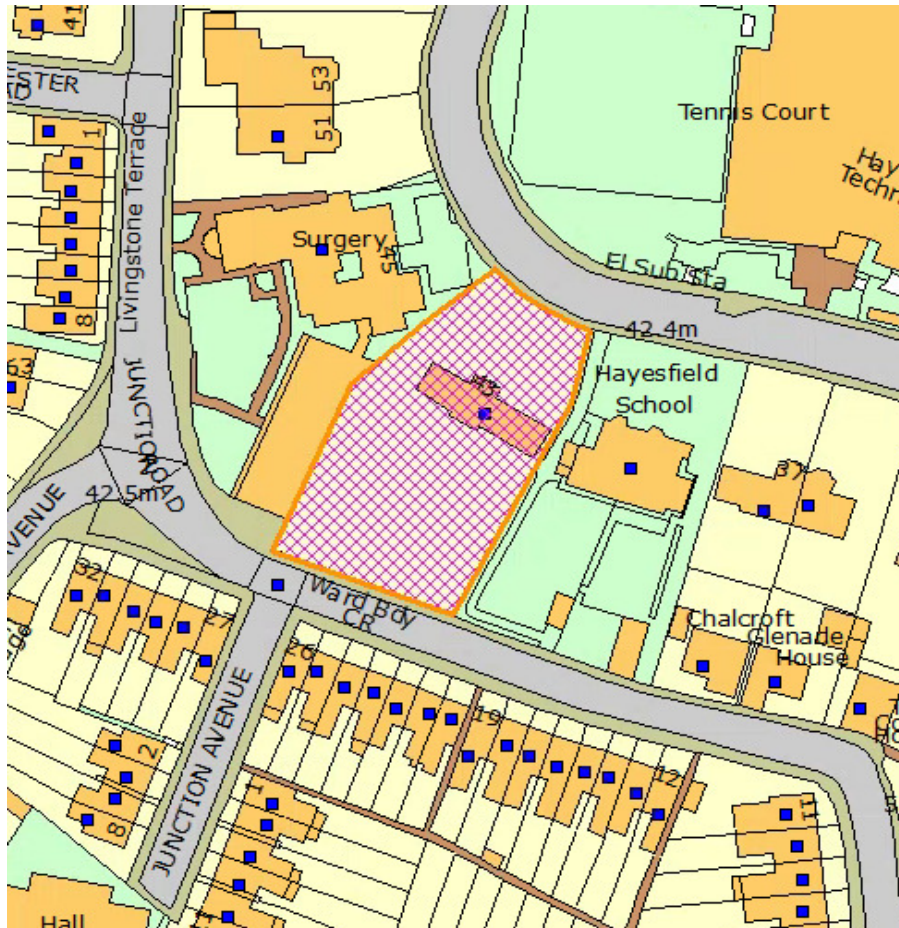
- [2] The papers identified or referred to in this List of Background Papers will only include letters, plans and other documents relating to applications/proposals referred to in the report if they have been relied on to a material extent in producing the report.
- [3] Although not necessary for meeting the requirements of the above Act, other letters and documents of the above kinds received after the preparation of this report and reported to and taken into account by the Committee will also be available for inspection.
- [4] Copies of documents/plans etc. can be supplied for a reasonable fee if the copyright on the particular item is not thereby infringed or if the copyright is owned by Bath and North East Somerset Council or any other local authority.

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ITEM NO.	APPLICATION NO. & TARGET DATE:	APPLICANTS NAME/SITE ADDRESS and PROPOSAL	WARD:	OFFICER:	REC:
01	14/04547/FUL 13 January 2015	Landmark Developments Limited 43 Upper Oldfield Park, Oldfield Park, Bath, Bath And North East Somerset, BA2 3LB Erection of 14no. residential apartments with parking and shared grounds (Revised Proposal) (Retrospective).	Widcombe	Rachel Tadman	PERMIT
02	14/04373/FUL 18 November 2014	Ms Megan Yakely 8 Lime Grove Gardens, Bathwick, Bath, Bath And North East Somerset, BA2 4HE Erection of a single storey extension providing kitchen and a new second floor dormer	Bathwick	Stuart Ashford	PERMIT

**REPORT OF THE GROUP MANAGER, DEVELOPMENT MANAGEMENT ON  
APPLICATIONS FOR DEVELOPMENT**

**Item No:** 01  
**Application No:** 14/04547/FUL  
**Site Location:** 43 Upper Oldfield Park Oldfield Park Bath Bath And North East Somerset BA2 3LB



**Ward:** Widcombe                      **Parish:** N/A                      **LB Grade:** N/A  
**Ward Members:** Councillor I A Gilchrist                      Councillor Ben Stevens  
**Application Type:** Full Application  
**Proposal:** Erection of 14no. residential apartments with parking and shared grounds (Revised Proposal) (Retrospective).  
**Constraints:** Agric Land Class 3b,4,5, Article 4, Conservation Area, Forest of Avon, Hazards & Pipelines, Hotspring Protection, MOD Safeguarded Areas, SSSI - Impact Risk Zones, World Heritage Site,  
**Applicant:** Landmark Developments Limited  
**Expiry Date:** 13th January 2015  
**Case Officer:** Rachel Tadman

## **REPORT**

### **REASON FOR REPORTING APPLICATION TO COMMITTEE:**

The application has been referred to Development Control Committee at the request of the Development Group Manager.

### **DESCRIPTION OF SITE AND APPLICATION:**

The application site comprises some 0.2 hectares on the south side of Upper Oldfield Park, adjoining a GP surgery/medical centre to the west and Hayesfield School buildings to the north and east. The site has a historic residential use, being previously occupied by a two storey dwelling of inter-war age known as Oakford House, prior to the granting of planning permission for the redevelopment on the site in 2009.

Other than the directly adjoining medical and educational uses the site context is predominantly residential in nature. Upper Oldfield Park is characterised by large four/five storey detached or semi-detached Victorian/early 20th Century villas set in large plots, but with some infill development, which includes the application site and the GP surgery next to it. To the south and west of the site the area is characterised by smaller, two storey Victorian/Edwardian terraced dwellings.

The site is within the Bath Conservation Area and World Heritage Site. The boundary of the Conservation Area runs along Junction Road to the west of the site, directly adjacent to the GP surgery.

The application proposes the erection of 14 residential apartments with parking and shared grounds. The building, externally, is largely complete therefore this application is retrospective and is being considered under the provisions of Section 73a of the Town and Country Planning Act 1990.

The apartments are contained within a building of 5 storeys above a basement car park. The flats are all two beds units, three per floor on ground to third floor, and two units on the fourth floor.

Overall the building measures 18.6 m high from the top of the basement slab level to ridge height, that is to say the highest point of the roof, (19.5 m to the top of the roof lights), the top of the building sits at a height of 60.09 AOD.

In plan form the building would be 28.6 metres wide at lower ground, upper ground and first floor level, 18.9m wide at second and third floor and 18.2m at fourth floor level. The building would be 18.7 metres deep extending to 19.7 metres to include the bay windows on the front elevation.

The building includes a number of balconies and terraces, side terraces at first floor level, front balconies at third floor, front and rear balconies at fourth floor level.

The principal vehicle and pedestrian access to the site is proposed from Upper Oldfield Park. The existing access is to be used, albeit widened, and this will provide access to an undercroft parking area which will accommodate 15 parking spaces on the basis of one space per dwelling as well as level access to the lift. Within the front garden of the site is

a shared car space provided in partnership with the City Car Club where each apartment will benefit from two full memberships for life.

The site is proposed to be subject to a comprehensive landscape treatment, including replacement tree planting and ancillary structures.

## BACKGROUND HISTORY:

### REFUSED APPLICATIONS

1) The site has a long planning history with the first planning application ref: 06/02073/FUL being refused for the development of 14 flats on 2nd November 2006 (as resolved at Development Control Committee 'A' on 1st November). That scheme was of a modern, flat roof, type design. This application was refused for the following reason:

The proposal by reason of its scale, bulk, width and depth would represent an excessively prominent obtrusive and excessive form of development which would have an adverse effect on the setting and character of the site, would result in its overdevelopment and would fail to appropriately preserve or enhance the character or appearance of the Bath Conservation Area and World Heritage Site contrary to the provisions of policies VIS2, SS9, EN3, EN4 and HO6 of RPG10, policies 1, 6, 19 and 35 of the Joint Replacement Structure Plan, policies C1, C2, C4 and H13 of the adopted Bath Local Plan and policies BH.1, BH.6 and D4 of the revised deposit draft Bath and North East Somerset Local Plan, and the Bath City Wide Character Appraisal Supplementary Planning Document.

For clarity this building was approx. 31m wide reducing to 25m at second floor and above, 20m deep and 17.3m tall.

2) Planning application Ref: 07/00653/FUL was refused on the site for the erection of 13 no residential apartments with parking and shared grounds on 15 June 2007 (as resolved at Development Control Committee on 13 June 2007). This application was refused for the following reason:

The proposed development, by reason of its inappropriate design, incorporating a predominance of flat roofs, would be incongruous in this prominent location and out of character within its context. This would be harmful to the character and appearance of this part of the Conservation Area and World Heritage Site. This would be contrary to Policies C1, C2, C3, C4 and H13 of the Bath Local Plan and BH.1, BH.6, D.2 and D.4 of the Bath and North East Somerset (including waste and minerals policies) Local Plan as proposed to be modified.

For clarity this building was approx. 28.5m wide reducing to 18.2m, 18.8m deep and 16.3m tall.

3) Planning application ref: 10/00294/FUL was refused for the erection of 13 no residential apartments with parking and shared grounds on 11 June 2010, at delegated Officer level, for the following reason:

The proposed development, by reason of its inappropriate design, incorporating a predominance of flat roofs, would be incongruous in this prominent location and out of

character within its context. This would be harmful to the character and appearance of this part of the Conservation Area. This would be contrary to Policies BH.6, D.2 and D.4 of the adopted Bath and North East Somerset Local Plan (including minerals and waste policies) and advice contained within PPS 5.

For clarity this building was approx. 28.5m wide reducing to 18.5m, 18.8m deep and 16.3m tall

## APPROVED APPLICATION

1) Planning permission was granted on 26 January 2009 for the erection of 14no. residential apartments (Ref: 07/02461/FUL).

For clarity the approved building measured 17.4 metres high at ridge height from the top of the basement slab level, the total height of the building was 58.93 AOD.

In plan form the building would be 28.4m wide at lower ground, upper ground and first floor level, 18m wide at second and third floor and 15m at fourth floor level.

The building would be 17.8 metres deep extending to 18.7 metres to include the bay windows on the front elevation.

## COMMENCEMENT OF DEVELOPMENT

Application 07/02461/FUL was granted permission on the 26th January 2009 and therefore was due to expire on the 26th January 2012.

Planning permission 07/02461/FUL carried 23 conditions: 7 required compliance only (i.e. no formal consent required); 3 were pre-occupation conditions and therefore did not require attention before works commenced; 1 (condition 13) requires the submission of details (but no trigger or time limit was given for the condition); the remaining 12 conditions required formal consent of the Council before work could commence on site. Application 11/05409/COND discharging all 12 requisite conditions was approved on the 24th January 2012, two days before the permission expired. The Council is therefore satisfied that the requirements of the pre-commencement conditions had been met prior to the permission expiring.

Following a complaint received by the Enforcement Team stating that works had started on site, Officers inspected the site on 25th January 2012 (the day before the permission was due to expire) and noted that demolition of the side extensions of Oakford House was taking place by a company called TR Demolition; in addition, clearance of the vegetation around the site had taken place, protective fencing around trees was in place and a mobile site office had been erected on site. A photographic record was taken as evidence and Officers returned the following day and across the course of the next week to inspect the level of work being carried out. Based on the observations made on site Officers were satisfied that a material commencement of development had taken place before the 26th January 2012 in accordance with Section 56 of the Town and County Planning Act 1990 and Officers are therefore satisfied that the planning permission ref: 07/02461/FUL remains extant.

Notwithstanding the commencement of development, it became apparent once the development reached roof level that the building as currently erected on site had deviated from the original plans and is therefore unauthorised. For the reasons stated, Officers are content that the original permission (07/02461/FUL) is extant in perpetuity and therefore a genuine fall-back position on site for a building of a similar scale, mass and height exists. This application is being considered as a retrospective application under the provisions of Section 73A ("Planning permission for development already carried out"). Whilst the history to the site and the presence of an extant permission is a significant material consideration this application is being assessed on its own individual merits in line with prevailing policy rather than as a revision to the previously approved scheme. It is worth noting that whilst the prevailing policies have changed since the grant of permission in 2009 - with the adoption of the B&NES Core Strategy (2014) and the NPPF (2012) - the policies against which this application is assessed are not significantly different to those against which the 2009 permission was granted, indeed many of the policies against which the original permission was assessed still remain relevant.

## ENFORCEMENT ACTION

As stated above, it became apparent to the Council in mid-2014, when the development reached roof level, that the building had not been built in accordance with the approved plans insofar as the building appeared taller and wider than approved, lacked the recessed balcony elements on the side elevations at roof level, and featured a more disjointed roofscape with additional fenestration.

An enforcement investigation was carried out culminating in the issuing of a Temporary Stop Notice (TSN) on 12th September 2014. The Notice ceased all works on site for a period of 28 days and allowed Officers the opportunity to fully assess the deviations from the approved plans in order to negotiate with the developer and consider the appropriate course of action.

Objections have been raised in respect of this application citing the reason for issuing the TSN where it stated "the development is considered detrimental to the visual amenities of the area and the residential amenities of surrounding residents". This objection is noted.

For clarification, at the time the Notice was issued, works were continuing despite the concerns raised by Officers with the developer; a decision therefore had to be taken whether to stop works in the interest of amenity. There was a genuine concern at the time that what was being built, if allowed to continue could be unacceptable however at the time the building was still covered in scaffolding and the exposed timber roof had not been covered therefore it was not possible to fully assess the extent of the works or the potential harm of those works. Government guidance as set out in the NPPG (2014) allows for the serving of a TSN to "prevent serious or irreversible harm to the environment in the surrounding area" where it is deemed expedient to do so.

A TSN is a discretionary tool the Council can use with immediate effect in order to exert control over a breach of planning, by its very nature there is not time to conduct a full scale consultation and the decision to issue the Notice is taken unilaterally. The decision in this instance was taken to issue the Notice in order to cease any further works taking place to allow Officers to determine the relative scale of harm without further works continuing; notwithstanding, once the facts had been established and negotiations had

taken place to secure amendments to the roof the decision was taken that it would not be expedient to follow up the TSN with a full Stop Notice and Enforcement Notice. It was considered, subject to various design amendments to the roof, that the applicant could exercise their rights under Section 73A in order to seek retrospective permission, allowing the Council the opportunity to conduct a full public consultation and seek the views of statutory consultees.

For clarification, during the course of the TSN, officers negotiated the removal of the two large projecting roof access dormers which were considered to accentuate the extent of the flat roof area at the top of the building; a reduction in the roof span and projection on the northern (Upper Oldfield Park) elevation setting the extent of the flat roofs above the fourth floor terraces back away from the front of the building; and, recessing the elevations of the fourth floor side projections back inside the line of the main side elevation walls in order to provide a greater degree of relief and thus create a visual step back in the roof line at fourth floor level. Without prejudice to due process, the amendments were deemed sufficient enough to allow officers to consider that the submission of a retrospective planning application was an acceptable course of action.

The issuing of the TSN in this case is a material consideration as it clearly indicates the strength of concern the Council had for the development at the time, that said, the TSN is not binding to any future decision of the Council. As stated, the roof of the building has been modified since the Notice was served removing and altering certain significant aspects of the roof form. Whilst the amendments did not address all of the concerns raised by the Council, essentially the scheme under consideration with this application is not the same scheme that the TSN was served against. As with the extant permission for the site, the TSN also forms part of the history to this site and is therefore a material consideration.

## RETROSPECTIVE PLANNING APPLICATION

The Applicant has exercised their right to submit a full planning application under Section 73A of the Town and Country Planning Act 1990 to seek to regularise the unauthorised dwelling. This is the application now under consideration.

Objections have been raised stating that the Council should refuse this application on the basis of it being retrospective. For clarity the works carried out on site are not unlawful, they are unauthorised; planning legislation, under Section 73A of the Town and Country Planning Act, 1990, allows developers to seek retrospective permission for developments that do not have permission and the guidance makes it clear that Local Planning Authorities should consider such applications as they would any other planning application. Officers are mindful of the guidance set out in the NPPG and the provisions of S73A and this application will be determined in accordance with the prevailing policies and legislation on its own individual merits, due consideration has been given to the history of the site, including the enforcement action taken.

## OTHER RELEVANT PLANNING HISTORY:

DC - 06/02075/CA - CON - 19 July 2006 - Demolition of 43 Upper Oldfield Park.



DC - 11/05409/COND - DISCHG - 24 January 2012 - Discharge of conditions 2,4,5,11,12,14,15,17,20,21,22,23 of application 07/02461/FUL (Erection of 14no. residential apartments with parking and shared grounds (Revised Application))

DC - 12/00387/CA - CON - 5 April 2012 - Demolition of existing dwelling on site.

DC - 14/04229/NMA - APP - 1 October 2014 - Non-Material Amendment to application 07/02461/FUL. (Erection of 14no. residential apartments with parking and shared grounds (Revised Application))

### **SUMMARY OF CONSULTATIONS/REPRESENTATIONS**

Highways Development Officer: No objections subject to S106 obligations in respect of car-club membership and parking space provision, and conditions.

Conservation: The significance of this site is recognised by its inclusion in the Conservation Area and greater World Heritage Site. There is a duty under Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the preservation or enhancement of the character of the surrounding conservation area and I have fully considered this requirement in my present and past assessments, together with relevant Development Plan policy.

The current revised plans in respect of this application have not caused me to alter my previous advice on the overall design. The proposal introduces a further building to this part of the street scene which closely reflects and interprets the siting, form, scale, symmetry and front building line of the imposing pair of semi-detached C19 villas immediately to the east of the site (No's 35-41). Apart from the roof treatment (as discussed below), the overall form of building proposed will satisfactorily group with and reflect the appearance of these prominent structures in this part of the Conservation Area street scene. It will therefore in principle make a positive contribution to local character and distinctiveness, thereby preserving the character of this part of the conservation area.

I have revisited the site and its immediate surroundings, and have also viewed the building from medium and long range public vantage points in the World Heritage Site. This has confirmed that the overall form of the proposed development as seen in the medium and long distance views will not harm the setting of these heritage assets. Inevitably the colour of the natural stone will appear prominent in such views in the short term until such time as it has weathered to a more subdued tone akin to the surrounding properties.

However, the current set of design revisions also relate to the roof top treatment which previously caused me concern. I appreciate that some visually beneficial design changes have been made to items such as the solar panels and roof lights. Despite these improvements I remain concerned that the increase in area of the central flat roof and the cumulative impact of the roof-top features is ungainly and will harm the skyline appearance of the proposed development. This includes the edges of the solar panels, antennae and lead clad vent structures which will all be visible from street level, particularly from local views in Upper Oldfield Park and Junction Road.

Much of the fabric of the Conservation Area would remain unaltered by this aspect of the proposal, so the harmful impact on its significance is on the short distance views and is less than substantial. In such circumstances the National Planning Policy Framework

(paragraph 134) requires that the harm is to be weighed against the public benefits of the proposal.

English Heritage: Do not object but offer the following general observations:

The proposed scheme has effectively become slightly larger and higher as a result of a number of alterations that have had a cumulative impact. We previously indicated on different development proposals for this site, that there is a need to take account of the wider setting issues in this part of the city, particularly as they might affect the Outstanding Universal Values (OUV) of the World Heritage Site (WHS). This also applies to this application.

Whilst the previous (2009) scheme appeared to have a cleanly shaped roof line with little interruption other than from the chimney and lift shaft, this scheme appears to have more plant and other paraphernalia projecting out of the top of the roof. This is unfortunate as it creates a more alien roof form when seen in the context of its neighbours in more distant views of this part of the city. This in turn could impinge on the OUV of the WHS.

The photomontages do not appear to provide information to demonstrate what impact this change will have. More photomontages might help to overcome concerns relating to the potential harm from these changes. It is also noted that the windows on the recessed side wings do not appear to have repeated the approved schemes approach of using larger windows to echo the proportions of the windows on the main aspect of the building. This is a disappointing alteration as it makes the side wings look meaner and less harmonious with the principle front elevation.

We would urge you to address the above issues, and recommend that the application should be determined in accordance with national and local policy guidance, and on the basis of your specialist conservation advice.

No further comments on the revised plans have been received.

Waste Services: Not acceptable in its current form.

The proposed waste and recycling store cannot be serviced for collections from its current location within the plans. It is positioned within the further corner of the lower ground floor, the adjacent access point appears to be steps to the outside ground level.

The position of the bin storage area should be a maximum distance of 8m from the highway, ideally outside. Any slope the bins will need to be taken up must not exceed 1:12.

Affordable Housing: Not acceptable in its current form:

Policy CP9 of the adopted core strategy required 30% provision on large development schemes in the BA2.3 postcode area

This application is not policy compliant, due to the omission of the affordable housing contribution.

There is no evidence confirming the affordable housing contribution will accord with the Councils affordable housing design, layout & construction requirements as contained within the B&NES SPD 2009.

Education Services: A total contribution is requested of £20,873.26.

This is made up of £15,741.26 for Early Years provision, £5,132.00 for school places and Nil for Youth provision.

Parks: A total contribution is requested of £41,202.84.

This is made up of £36,388.80 formal green space provision, £4,032.00 natural green space provision and £782.04 allotment provision.

Bath Preservation Trust: Objects for the following reasons:

- The proposed development, by reason of its inappropriate size and design would be harmful to the character and appearance of this part of the Conservation Area and World Heritage Site.
- The built scheme is contrary to the Planning (Listed Buildings and Conservation Areas Act) 1990, Section 12 of the National Planning Policy Framework, Core Strategy policies B1, B4 & CP6 and Saved Local Plan policies, D4, BH2 & BH6.
- A previous scheme for a building of this size, width and depth, was deemed to have a detrimental effect on the townscape and character of the conservation area and refused. These same grounds for refusal therefore remain applicable.
- Retrospective permission gives entirely the wrong message that developers can build what they like in the city without any regard to the designations and planning policies that are in place to protect the heritage value of Bath.

We would therefore recommend that the application be refused in its current form and that the Council takes necessary action to remedy this breach of the planning control.

Local Representations: At the time of writing this report a total of 96 letters of representation have been received. 5 make general representations, 64 object to the scheme, 27 support it. Many of the representations raise the same or similar issues, all representations have been taken into consideration and the original responses are retained on file.

The following is a summary of the key points of objection received:

1. The building appears incongruous, is visually intrusive, too large, is of a poor design, represents overdevelopment and dominates the skyline
2. Out of character with the area and this part of the Bath Conservation Area and World Heritage Site
3. The roof scape is cluttered, ill considered and incongruous
4. Overshadowing of adjacent properties
5. Glare from the windows having an impact on residential amenity
6. Lack of affordable housing
7. It is bigger than the previous proposals for the site which were refused due to the detrimental impact on the Conservation Area and World Heritage Site.

A significant number of the concerns raised also relate to the fact that the development has not been built in accordance with the extant scheme and that, by the very fact that the scheme is retrospective, it should be refused. Concerns also include the planning history of the site, the serving of a Temporary Stop Notice and also whether or not the 2009 permission is extant.

The following is a summary of the key points of support received:

1. The building is not flat roofed and is lower than the school next door.
2. The building will enhance the area, is clever and an interesting design.
3. The difference in height makes no overall difference to the surrounding area.
4. These new homes add to the much needed transformation and regeneration in this area.
5. The building itself is reminiscent of the contextual style and sensitive to its neighbours yet enhances this local area of Bath.
6. Bath is in need of new housing
7. There is very little difference from the approved plans and is not significantly difference to the one given permission by the Council.

## **POLICIES/LEGISLATION**

The Core Strategy for Bath and North East Somerset was formally adopted by the Council on 10th July 2014. The Core Strategy now forms part of the statutory Development Plan and will be given full weight in the determination of planning applications. The Council's Development Plan now comprises:

- Bath & North East Somerset Core Strategy (July 2014)
- Saved Policies from the Bath & North East Somerset Local Plan (2007)
- Joint Waste Core Strategy

The following policies of the Core Strategy are relevant to the determination of this application:

- Policy DW1 - District Wide Spatial Strategy
- Policy SD1 - Sustainable Development
- Policy B1 - Bath Spatial Strategy
- Policy B4 - World Heritage Site and its setting
- Policy CP6 - Environmental Quality
- Policy CP9 - Affordable Housing
- Policy CP10 - Housing Mix
- Policy CP2 - Sustainable Construction
- Policy CP3 - Renewable Energy
- Policy CP6 - Environmental Quality
- Policy CP7 - Green Infrastructure
- Policy CP13 - Infrastructure Provision

The following saved policies of the Bath and North East Local Plan, including minerals and waste policies, adopted October 2007 are also relevant to the determination of this application.

- Policy SC.1: Settlement classification
- Policy SR.3: Provision of recreational facilities to meet the needs of new development
- CF.3 Contributions from new development to community facilities
- IMP.1 Planning Obligations
- Policy D.2: General design and public realm considerations
- Policy D.4: Townscape considerations
- Policy NE.4: Trees and woodlands
- Policy BH6: Development within the Conservation Area
- Policy T.24: General development control and access policy
- Policy T.26: On-site parking provision

## SUPPLEMENTARY PLANNING GUIDANCE

- Planning Obligations SPD
- Sustainable Construction & Retrofitting SPD
- Bath & North East Somerset Council Green Space Strategy adopted March 2007
- Bath & North East Somerset Council Green Infrastructure Strategy adopted March 2013

## LEGAL FRAMEWORK

Town and Country Planning Act, 1990 (as amended)

Development Management Procedure Order, 2010 (as amended)

There is a duty placed on the Council under Section 72 of the Planning (Listed Buildings and Conservation Areas) Act to pay special attention to the preservation or enhancement of the character of the surrounding conservation area.

## NATIONAL PLANNING POLICY

Full consideration has been given to the National Planning Policy Framework including, but not limited to, Chapter 6 Delivering a wide choice of high quality homes, 7 Requiring good design, 8 Promoting healthy communities and 12 Conserving and enhance the historic environment.

Full consideration has also been given to the Government Guidance set out in the National Planning Practice Guidance (NPPG) 2014

## OFFICER ASSESSMENT

### PRINCIPLE OF THE DEVELOPMENT:

The proposed development is within the defined urban area of Bath where residential development is acceptable in principle and is in accordance with Policy B1 of the Core Strategy.

Furthermore the principle of a building of a similar scale, height and width in this location has also been established by the granting of planning permission in 2009 ref: 07/02461/FUL which Officers are satisfied is extant. This is a material consideration that has significant weight and is a strong fallback position. The policy position has not significantly changed since the grant of planning permission in 2009.

Notwithstanding the history of the site, the application now being considered has to be considered on its merits.

## DESIGN, LAYOUT AND IMPACT ON THE BATH CONSERVATION AREA AND WORLD HERITAGE SITE:

The character of Upper Oldfield Park and this part of the Bath Conservation Area and World Heritage Site is relatively mixed with terraces of modest two storey dwellings on Junction Road to large Victorian villas on Upper Oldfield Park. This is also interspersed with more modern low level buildings such as the Doctor's surgery adjacent to the site and the contemporary Hayesfield School development opposite that uses a high proportion of flat roofs.

Within this context the overall design of the proposed building appears as a contemporary representation of the more historic villas that form part of the character of Upper Oldfield Park and particularly with regard to the adjacent building of Hayesfield School.

The Hayesfield School building to the east is the largest building in this part of the street scene and the overall width of the proposed building, when measured at first floor level, at 18.9m is only marginally wider than Hayesfield School which is 18m wide. Objections have been raised that this development fails to retain the gap between buildings and therefore detracts from the streetscene however this objection is incorrect. The gap between the development and Hayesfield School above ground floor level is actually larger than the adjoining gap between the school and no.37. At ground floor level the gap between the development and the Hayesfield School building is approximately 4.7m (compared to a c.4.6m gap between Hayesfield School and no.37 Upper Oldfield Park). Above ground floor, the gap between the development and Hayesfield School is approximately 11.9m compared to the above ground level gap of 7.5m between Hayesfield School and no.37.

Objections have been raised stating that the apartment block is taller than Hayesfield School and therefore not in keeping with the prevailing grain. For clarification, the ridge of the development is 60.09 AOD whereas the ridge of the adjacent Hayesfield School building is 60.49 AOD. The development as built is therefore 0.4m lower than the adjoining Hayesfield School building.

In terms of the overall height, size and bulk of the proposed development, the building is considered to relate well to its immediate context and compares favourably to the adjacent Hayesfield building and would not have a significant detrimental impact on the street scene. The building is highly visible and somewhat prominent in some medium range views of the site, particularly from the south, due to its location on a ridge within Upper Oldfield Park where the land slopes gently away to the south and more steeply to the north. However the fact that it is visible/prominent in these views does not necessarily make it incongruous or unacceptable and it is not considered to be so.

It has always been accepted that in terms of comparative scale the building relates poorly to the adjacent doctor's surgery to the west, as this building itself is out of context, which is especially noticeable when viewed from Junction Road. However the surgery is very clearly an anomaly producing a visual gap in what is otherwise a street of a fairly uniform

pattern and as such the relationship between the proposed development and the Doctor's is considered to be acceptable.

Turning to more detailed design matters, the building's main elevation is that of a double gabled front elevation with wider additions at lower ground and upper ground level culminating in an outdoor terrace at first floor level. The lower ground level, providing the parking for the development, is located partially below ground with a sloping driveway leading down and would not be overly visible in the street scene as it would be screen by planting and the front boundary wall.

Running up the building from first floor level, on each side, and set back from the main front elevation, is a side projection which culminates at fourth floor level with a slate hung flat roofed element. This particular element is also set back from the front and rear of the side projection to form a small balcony at the front and rear.

These side projections are again reflective of the character of the adjoining Victorian villas, albeit in a contemporary style, and the provision of the slate clad flat roof addition at fourth floor level is considered to add an interesting and not incongruous element that improves the architectural legibility of the building.

Turning to the roof of the building, a mixture of flat and pitched roofs are used in a mix of materials including natural slate and slate grey glass fibre. On the north eastern side are located a number of solar PV panels which, in the main, are laid flat against the flat roof element meaning they are hardly visible. The panels set against the pitched roof, however are visible from street level. The roof also includes a number of ventilation stacks and rooflights.

Whilst the overall design of the building is considered to be acceptable, the application, as originally submitted, showed a particularly cluttered roofscape which was dominated by solar PV panels and projections from ventilation stacks. This resulted in concerns being raised by both English Heritage and the Conservation Officer that the scheme would have a poor visual appearance from public viewpoints. As a result Officers have negotiated revisions to reconfigure the solar panels to lay the majority of them flat against the flat roofed element at fourth floor level which have considerably improved the visual appearance of the roofscape of the building from public viewpoints.

With regard to materials the building uses a high level of glazing, particularly on the rear corners where wrap around windows are provided. The main external walling material is natural Bath Ashlar stone, quarried in Limpley Stoke, and slate are used on the elevations of the fourth floor side projection. These materials are reflective of the character of the surrounding area and are considered to be acceptable.

Overall the size, design and massing of the proposed building is considered to be acceptable and would not have a harmful impact on the street scene. The overall height is also considered to relate well with respect to the context and the addition of a building of this design is deemed to add an appropriate addition in the streetscene to form a group of buildings of similar design and size in this part of the street.

The site is within the Bath Conservation Area and therefore there is a duty under Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special

attention to the preservation or enhancement of the character of the surrounding conservation area. Furthermore the location of the site within the World Heritage Site requires that the wider setting issues in this part of the city, particularly as they might affect the Outstanding Universal Values of the World Heritage Site are taken into consideration.

The proposed development has been subject to a significant number of objections by local residents stating that the building would appear incongruous, be visually intrusive, is too large, would dominate the skyline and is out of character with the area and this part of the Bath Conservation Area and World Heritage Site.

Whilst these concerns have been considered, the proposal is nevertheless considered by Officers, including the Conservation Officer, due to its overall design, and having specific regard to its context, to make a positive contribution to local character and distinctiveness, thereby preserving the character of this part of the Bath Conservation Area.

The design is considered, overall, to be of a high standard and the building is constructed out of high quality materials. As stated by the Conservation Officer, the proposed building is considered to closely reflect and interpret the siting, form, scale, symmetry and front building line of the imposing pair of semi-detached C19 villas of Hayesfield School to the east and the overall form of building proposed will satisfactorily group with and reflect the appearance of these prominent structures in this part of the Conservation Area street scene.

Notwithstanding, there are still some outstanding concerns regarding the roof treatment and, although the clutter to the roof has been significantly reduced, the appearance of the building at this level does remain unfortunate. The Conservation Officer remains concerned that the increase in area of the central flat roof and the cumulative impact of the roof-top features would harm the skyline appearance of the development. Notwithstanding, the Officer is also clear that, whilst there is a harmful impact from specific element of the development, this harm is limited to a specific part of the building and the impact of that harm is only in short distance views. When balanced against the overall impact of the development in the wider setting of the Conservation Area and World Heritage Site as a whole, the conclusion reached is that the harm (in its totality) is less than substantial. Having concluded that the harm is less than substantial, it then needs to be weighed against the public benefits of the proposal, including securing its optimum viable use, as required under para 134 of the NPPF.

In this instance the proposed development is considered to provide a public benefit by providing a total of 14 dwellings on a brownfield site that will add to the housing supply in the City of Bath thus contributing to the overall supply of housing in the district reducing the need to develop greenfield sites. Furthermore the development would introduce a building which, overall, is of a high quality, contemporary design that makes a positive contribution to local character and distinctiveness. Finally the development is considered to represent the optimum viable use of the site by maximising the available land to deliver an appropriate number of residential units.

In light of the above, when the harm to the Conservation Area and World Heritage Site is considered to be less than substantial, and is weighed against the public benefits cited, it



is concluded that the harm does not outweigh the public benefit of the scheme and therefore the refusal of the development on this point cannot be justified.

Whilst the proposal is within a Conservation Area, this does not preclude modern architecture or large buildings, subject to them being of a high standard of design. The UNESCO Mission Report of 2009 stated that high quality contemporary styles are desirable in Bath as it adds a new layer of quality to complement the existing excellence. It is considered that this proposal is in line with these recommendations.

Furthermore when a comparison is made against the original two storey inter war dwelling the overall design of the proposed building is considered to represent an enhancement to this part of the Bath Conservation Area and World Heritage Site through the introduction of a high quality building into the area. Finally for the reasons outlined above the proposal is also not considered to have a harmful impact on the Outstanding Universal Values of the World Heritage Site.

Whilst this application is judged on its own merits, as previously discussed the history of the site is a significant material consideration and cannot be ignored. It is worth highlighting that in comparison with the extant permission the design of the proposed building is largely unchanged apart from some minor changes to windows. The main area of amendment is to the side projections at fourth floor level and the roof design.

The side projections at fourth floor level have been made larger by reducing the size of the outdoor terraces that would have been provided at this level. Previously they projected 1.1m from the main side elevation and now they project 2.6m to meet the side elevation of the main side building.

With regard to the roof, this has been extended upwards by 0.6m from the extant ridge level in order to accommodate a plant room etc. at fifth floor level. This has further been supplemented with a number of ventilation stacks and rooflights. Solar panels have also been laid flat against the flat roofed elements of the building and laid against one side of the pitched roof.

Whilst the changes to the windows have raised concerns from English Heritage it is considered that, when comparing the two schemes, the extant scheme was better. However, whilst it is unfortunate that some of the windows have been amended, it is not considered that this change makes the design or appearance of the development unacceptable. A small amount of quality in its design has been lost but this is not considered to be significant when the building is viewed as a whole

Turning to the side projections at roof level, these were considered very carefully when the extent permission was granted and it was considered that they were acceptable. The projections have now been extended but Officers are of the view that they are at least equal to or even better in design terms than the extant permission, articulating the building and providing a detail of interest.

With regard to the size of the overall building it has been enlarged in total by 0.2m in width at lower ground, upper ground and first floor level, 0.9m in width at second and third floor and, by extending the side projections, reducing the areas of terracing, the width at fourth floor level has increased by 3.2m (albeit within the envelope of the building).

The proposed building would be 1m deeper in comparison with the extant permission.

With regard to the total height, the current building is c.1.2m taller than the extant scheme with the height of the gables only 0.45m higher than the extant gables.

As was stated in the Committee Report for the extant permission, the principle issue is not whether one building is bigger than another, but instead whether or not a proposed building of this scale fits in with the street scene and area in general. The height of the proposed building is considered to remain acceptable in terms of its relationship with its immediate neighbour and will allow for a, albeit small, step down which is characteristic of this part of the Conservation Area and World Heritage Site. In light of this its height, bulk and mass is considered to be acceptable and would sit in harmony with the surrounding buildings and streetscene.

The proposed development has also been subject to a significant level of objection in relation to concerns that the building has been increased in height compared with the previously refused schemes. To clarify this specific objection it can be confirmed that the previously permitted scheme was itself also higher than the refused scheme so it was always expected that a building, higher than that refused, would be constructed on this site.

#### IMPACT ON RESIDENTIAL AMENITY:

The directly adjoining properties to the north, east and west of the site are not in residential use, but instead are occupied by a medical centre and Hayesfield School. Whilst there are residential dwellings to the rear of the site, on Junction Road, there is approx. 40m distance elevation to elevation.

In light of this, with regard to the impact of the development on residential amenity, this proposal is not considered to have an unacceptable impact on the amenities of the neighbouring occupiers.

With specific regard to residential amenity, the previous proposals to redevelop this site, including the permission in 2009 and the refusal in 2007, also concluded that the proposals would not have an unacceptable detrimental impact on the residential amenity of neighbouring occupiers.

There is the potential for overlooking from the large roof terraces at first floor level, however the proposed planted beds along the shared side boundaries, in conjunction with a suitable landscaping scheme, would ensure that views out of the site are restricted by a planting screen.

It is acknowledged that there would be some overlooking from the balconies, although this would be at an oblique angle, and given that the neighbouring properties to the north, east and west are not in residential use this is considered acceptable.

The impact on the existing residential properties in Junction Road to the rear of the site has been considered and assessed in detail. The proposal includes two small rear balconies at fourth floor level along with habitable rooms located at the rear of the upper

floors of the proposed building and it is acknowledged that some overlooking would inevitably occur. The terraces at fourth floor level were proposed, within the extant scheme, to wrap around the projection at fourth floor level allowing future residents the ability to overlook neighbouring dwellings from a high level. The removal of a significant part of the terrace by expanding the side projections to increase the internal living accommodation is considered to reduce the incidence of overlooking to the benefit of residential amenity.

However, due to the significant distance of approx. 40m between the front elevations of junction Road and the rear elevation of the proposed development, it is concluded that there would not be a significant or unacceptable detrimental impact in terms of loss of privacy or amenity as a result of direct overlooking or overshadowing from the proposal.

A specific concern from a local resident has been that the development as built is causing a high level of glare from the sun being reflected off the windows. This objection is noted however as the issues of glare will only really occur at certain times of year in the winter months, due to the sun being low in the sky, and given the fact that almost every reflective surface on any building is capable of causing sporadic incidents of glare, it is not considered to be unduly detrimental to the extent of warranting a refusal of the application. The incidence of glare will change with time, seasons and weather conditions and will be further mitigated by planting along the boundary with Junction Road which could be negotiated to provide an appropriate but thicker screen to reduce the incidence of glare. Environmental Health have also confirmed that light glare from the sun reflecting is not a statutory nuisance.

In comparison with the extant permission, the number of windows and their proximity to neighbouring dwellings have not changed to such a degree as to have any further impact on residential amenity. The increase in size of the building is also not considered to have any further impact on amenity by reason of overbearing impact or overshadowing.

The terrace at first floor level is proposed to be 0.45m lower and the impact of this on the level of overlooking caused is marginal and would in any case still be adequately overcome by planting. The terrace at third floor is substantially unchanged.

Although a specific issue with regard to the glare of sunlight reflecting on the windows of the development has been raised, this impact is unchanged from the extant scheme. The glare would have been experienced with the extant scheme primarily because the location of the windows and the positioning of the rear elevation is relatively unchanged in comparison with the extant scheme.

Overall it is considered that impact of the development on the residential amenity of surrounding occupiers would be largely unchanged, reduced in specific areas and therefore would remain acceptable.

#### LANDSCAPING AND TREES:

The proposed development has no further impact on trees than the extant scheme and the necessary tree protection fencing is already in place. Therefore, subject to conditions

to retain the tree protection fencing during construction, it is considered that the impact on the tree within the adjacent Hayesfield Girls School site is acceptable.

With regard to landscaping of the site, the submitted plans show that the communal garden areas are to be laid out in a formal style and, whilst there is a limited amount of detail at this stage, this can be dealt with by condition.

It is therefore considered that the proposal will preserve this part of the Conservation Area, subject to appropriate conditions and the submission of a high quality landscaping scheme.

#### PLANNING OFFICER ASSESSMENT OF HIGHWAY ISSUES:

The provision for vehicular access and parking to serve the proposal is considered acceptable in the context of the site's location and accessibility by non-car modes. The access on to Upper Oldfield Park is also considered acceptable, the access onto Junction Road is intended for use only for service and maintenance, and, subject to a condition to control this, the proposal is considered acceptable in this regard.

The application includes the provision of membership of the local car share club for future residents on a lifetime basis at a ratio of two memberships per flat. Furthermore, space has been provided within the site for a parking space for the shared car. This is considered to be acceptable and will form an obligation within a S106 legal agreement.

The proposed development is therefore considered to be acceptable in terms of highway safety subject to an obligation in a S106 legal agreement and conditions.

#### SUSTAINABILITY AND RENEWABLE ENERGY:

The development is proposed to be constructed to Code for Sustainable Homes Level 4 and includes the following measures to achieve energy efficiency and sustainability including:

- Sustainable urban drainage systems to reduce water run off rates
- Sustainable building materials, in conjunction with solar passive gain, to reduce energy needs of the buildings
- Energy high performance windows
- Energy efficient lighting design
- Use of renewable technology including solar PV panels

The incorporation of sustainable construction features is considered to be in accordance with Core Strategy policy CP2 and the Sustainable Construction & Retrofitting SPD.

#### REFUSE COLLECTION:

A bin storage area is proposed at basement level with refuse collection taking place from Upper Oldfield Park, the same as the existing dwelling.

The Waste Services Section of the Council has raised concerns that the proposed bin storage area could not be serviced for collection and that its adjacent access point appears to use steps to the outside ground level.

Whilst these concerns have been considered, the specific location of the bins and the ease in which they can be moved to a kerbside location for collection, relates more to the operation of the building and is a matter to be overcome through the day to day management of the building.

#### PROVISION OF AFFORDABLE HOUSING AND DEVELOPER CONTRIBUTIONS:

The proposal is within the Bath area where, under Policy CP9 of the adopted core strategy, 30% provision of affordable housing is required.

Furthermore a contribution of £20,873.26 towards education provision has been requested by Education Services and £41,202.84 for Parks and Open Spaces.

However the application has been accompanied by a Viability Assessment Report, which sought to demonstrate that the seeking of any affordable housing provision or S106 contributions would make the development unviable.

Para 016 of the NPPG states 'where the deliverability of the development may be compromised by the scale of planning obligations and other costs, a viability assessment may be necessary.'

Para 019 goes on further to state 'where an applicant is able to demonstrate to the satisfaction of the local planning authority that the planning obligation would cause the development to be unviable, the local planning authority should be flexible in seeking planning obligations.'

'This is particularly relevant for affordable housing contributions which are often the largest single item sought on housing developments. These contributions should not be sought without regard to individual scheme viability. The financial viability of the individual scheme should be carefully considered in line with the principles in this guidance.'

The lack of affordable housing provision has been met with concern by Housing Services with the view expressed that the scheme is contrary to Policy CP9 of the Core Strategy. That said, on site affordable housing provision was always going to be problematic as the proposed layout did not lend itself to the provision of affordable housing nor were the appropriate affordable housing standards going to be met, part of which is due to the high service charges that a scheme like this would demand.

The development was initially designed when a scheme of 14 dwellings would have been below the relevant thresholds over which an affordable housing provision would have been required.

Furthermore, Housing Services, in acknowledging that they are happy to discuss a Commuted Sum consideration in lieu of on-site provision, are obviously of the view that on site provision is not absolutely necessary to make the scheme acceptable.

The submitted viability assessment has been subject to an independent assessment which has found that it has been demonstrated that the development is unviable even before the seeking of any affordable housing provision or S106 contributions.

Notwithstanding, by the time this application is considered by Development Control Committee the Community Infrastructure Levy (CIL) will have been adopted by the Council and the development will therefore be CIL liable. CIL will be applied in the event that permission is granted. An indicative CIL calculation can be presented by way of an update report once CIL comes into effect however the final figure would be dependent on permission being granted.

As a result of CIL, contributions such as Education and Parks will be included in the CIL charge. This means that a viability argument can now only be made on the basis that the provision of affordable housing provision would make the development unviable.

The National Planning Policy Framework sets out a core planning principle that in decision-taking local planning authorities should encourage the effective use of land by re-using land that has been previously developed. To incentivise the bringing back into use of brownfield sites, the Government confirms (through the NPPG) that local planning authorities should take a flexible approach in seeking levels of planning obligations and other contributions to ensure that the combined total impact does not make a site unviable.

As it has been demonstrated that the scheme is unviable even before taking into account affordable housing provision or S106 contributions, the addition of the CIL charge into the costs of the development would only serve to make the development more unviable. Officers therefore remain satisfied that seeking any affordable housing provision would make the development even more unviable and therefore, in line with the NPPF and NPPG, the Council is allowed to take a more flexible approach in not seeking commuted contributions.

The lack of affordable housing provision/commuted sum for reasons of viability make the application contrary to Policy CP9 of the Core Strategy and therefore the application has been advertised as a departure in line with the statutory requirements set out in the Development Management Procedure Order, the consultation period for this is due to expire on 16 April 2015.

#### CONCLUSION:

The principle of a building of a similar scale, height and width in this location has already been established, which, as stated, is a material consideration that has significant weight and is a strong fallback position.

Notwithstanding this the application now being considered has to be considered on its merits.

The proposed development has been met with significant levels of objection by local residents and, whilst these concerns have been taken into account, Officers are nevertheless of the view that the proposed development is acceptable and would not have a detrimentally harmful impact on the street scene. Furthermore it is considered that the

development would preserve the character of this part of the Bath Conservation Area and not have a harmful impact on the Outstanding Universal Values of the World Heritage Site.

It is the case that the building is marginally larger than the building permitted under the extant permission but, considering the overall size of the building, as is stated above, and is repeated here for completeness, the principle issue is not whether one building is bigger than another, but instead whether or not a building of this scale is acceptable with the street scene and preserves the character and appearance of the Conservation Area. The height of the proposed building is considered to remain acceptable in terms of its relationship with its immediate neighbour (Hayesfield School), retains the step between building heights and maintains the gap between buildings which is characteristic of this part of the Conservation Area and World Heritage Site. In light of this the height, bulk and mass of the development is considered to be acceptable and would sit in harmony with the surrounding buildings and streetscene.

The proposed development is not considered to have an adversely harmful impact on the residential amenity of either the future occupiers or those neighbouring the site. An issue has been raised with regard to glare from windows within the development but it is considered that this would only occur at certain times of the year and in any case can be adequately mitigated by increased planting along the boundary with Junction Road.

The proposed development is also not considered to have a harmful impact on highway safety subject to an obligation in a S106 legal agreement and conditions.

The proposed development, under Policy CP9 of the Core Strategy, has triggered a requirement for affordable housing provision which Housing Services have agreed does not need to be provided on site but could be met through a commuted sum. In addition to this, contributions have also been requested under the Planning Obligations SPD. In response the application has been accompanied by a Viability Assessment Report, which, having been independently assessed and verified, has demonstrated that the development is unviable even before the above requirements have been taken into account.

Of course by the time this application is considered CIL will have been adopted and a CIL charge will therefore be payable instead of individual contributions. This only leaves affordable housing provision to be considered under a viability argument. Notwithstanding this, as has been explained in more detail within the report above, Officers remain satisfied that the development is unviable and therefore the seeking of any affordable housing provision, either on site or a commuted sum, would make the development even more unviable. In line with the NPPG, and in light of the fact that this development has been shown to be unviable the Council are not therefore requiring the developer to provide a commuted sum in respect of affordable housing.

Finally it should also be borne in mind that the building subject to the extant permission was tested against policies that remain relevant and found to be acceptable in this part of the Bath Conservation Area and World Heritage Site. The building on this site was always going to be visible within short and medium range views.

In light of this great care has been taken to not only consider the proposed development on its merits but also in light of the extant permission. This is a balanced recommendation but, having carried out this careful assessment Officers are of the view that, in comparison, the amendments to the size and design of the building would not warrant refusal of retrospective planning permission and whilst the enlarged fourth floor does have an impact on the appearance of the building, it is not considered to be an unacceptable one.

Overall Officers are of the view that the development is acceptable. Limited concerns remain in respect of some details of the building particularly at roof level however in the overall context of the site, its setting and the area as a whole, it is concluded on balance that the development preserves the Conservation Area and does not detrimentally harm the Outstanding Universal Value of the World Heritage Site or the street scene. It is therefore recommended that retrospective permission is granted subject to the completion of a legal agreement and subject to conditions.

## **RECOMMENDATION**

PERMIT

## **CONDITIONS**

A Authorise the Planning and Environmental Law Manager to enter a Section 106 Agreement to secure the following:

The provision of parking space for the local car share club and membership of the aforementioned club for future residents on a lifetime basis at a ratio of two memberships per flat

B Wait for the consultation period for advertisement as a departure from the Development Plan to expire and then

C Subject to the prior completion of the above agreement, authorise the Group Manager to PERMIT subject to the following conditions:

1 No occupation shall commence until a hard and soft landscape scheme has been first submitted to and approved in writing by the Local Planning Authority; such a scheme shall include details of all walls, fences, trees, hedgerows and other planting which are to be retained; details of new walls, fences and other boundary treatment, finished ground levels; a planting specification to include numbers, density, size, species and positions of all new trees and shrubs; details of the surface treatment of the open parts of the site; and a programme of implementation.

Reason: To ensure the provision of an appropriate landscape setting to the development.

2 All hard and/or soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed in writing with the Local Planning Authority. Any trees or plants indicated on the approved scheme which, within a period of five years from the date of the development being completed, die, are removed or become seriously damaged or diseased shall be replaced during the next planting



season with other trees or plants of a species and size to be first approved in writing by the Local Planning Authority. All hard landscape works shall be permanently retained in accordance with the approved details.

Reason: To ensure that the landscape scheme is implemented and maintained.

3 The protective fences erected around the Pine tree on the Junction Road boundary, approved under Condition 4 of planning permission Ref: 07/02461/FUL, and discharged under application Ref: 11/05409/COND, which is located within Hayesfield School site, shall not be removed until the completion of the development. The area within the protected areas are to be kept clear of any building, plant, material, debris and trenching, with the existing ground levels maintained, and there shall be no entry to those areas except for arboricultural or landscape works as otherwise approved.

Reason: To safeguard the areas to be landscaped and the existing trees and planting to be retained within the site.

4 The area allocated for parking and turning on the submitted plan shall be kept clear of obstruction and shall not be used other than for the parking and turning of vehicles in connection with the development hereby permitted.

Reason: In the interests of amenity and road safety.

5 Before the dwellings hereby approved are first occupied, a properly consolidated and surfaced access (not loose stone or gravel) shall be constructed, details of which shall have previously been submitted to and approved by the Local Planning Authority.

Reason: In the interests of highway safety.

6 No occupation shall commence until the cycle parking indicated on the approved plans has been provided and shall thereafter be kept clear of obstruction and shall not be used other than for the parking of cycles in connection with the development hereby permitted.

Reason: In the interests of sustainable development.

7 The vehicle access/exit from Junction Road shall not be used other than for servicing and emergency vehicles.

Reason: In the interest of Highway Safety.

8 Before the dwellings are first occupied, new resident's welcome packs shall be issued to purchasers which should include information of bus and train timetable information, information giving examples of fares/ticket options, information on cycle routes, a copy of the Travel Smarter publication, car share, car club information etc. The packs shall have previously been submitted to and approved in writing by the Local Planning Authority.

Reason: In the interest of sustainable development.

9 No occupation shall commence until 1:50 scale drawings of the following are submitted and approved in writing by the Local Planning Authority:

- Doors and windows, to include colour details of frames and lintel and cill details;
- Any external vents and flues;

The development shall thereafter be carried out in accordance with the approved details.

Reason: In the interests of the appearance of the development and the character and appearance of the Conservation Area.

10 Notwithstanding the approved plans and the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification) no further satellite dishes or microwave antennae shall be attached to any building or erected within the site without the prior written permission of the Local Planning Authority.

Reason: In the interests of the appearance of the development and the character and appearance of the Conservation Area.

11 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification) no lines, mains, pipes, cables or other apparatus shall be installed or laid on the site other than in accordance with drawings first submitted to and approved in writing by the Local Planning Authority.

Reason: To safeguard the existing and proposed trees, vegetation and open spaces on the site.

12 No occupation shall commence until an elevation and 1:50 scale plans of the proposed front boundary wall and stone piers has been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out strictly in accordance with the approved details prior to occupation.

Reason: In the interests of the appearance of the development and the character and appearance of the Conservation Area.

13 Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2008 (or any order revoking and re-enacting that Order with or without modification) no further solar PV or solar thermal shall be installed on the building hereby approved unless a further planning permission has been granted by the Local Planning Authority.

Reason: In the interests of the appearance of the building and the character and appearance of this part of the Bath Conservation Area.

14 The development/works hereby permitted shall only be implemented in accordance with the plans as set out in the plans list below.

Reason: To define the terms and extent of the permission.

**PLANS LIST:**

1 This decision relates to drawing nos 492:S:001B, 492:5:000, 492:BR:02H, 492:BR:03H, 492:BR:04H, 492:BR:05H, 492:BR:06H, 492:BR:07H, 492:BR:08G, 492:BR:09H, 492:BR:12D, 492:BR:13H, 492:BR:14L, 492:BR:15L, 492:BR:16L, 492:BR:17L.

492:C:010, 492:C:011.

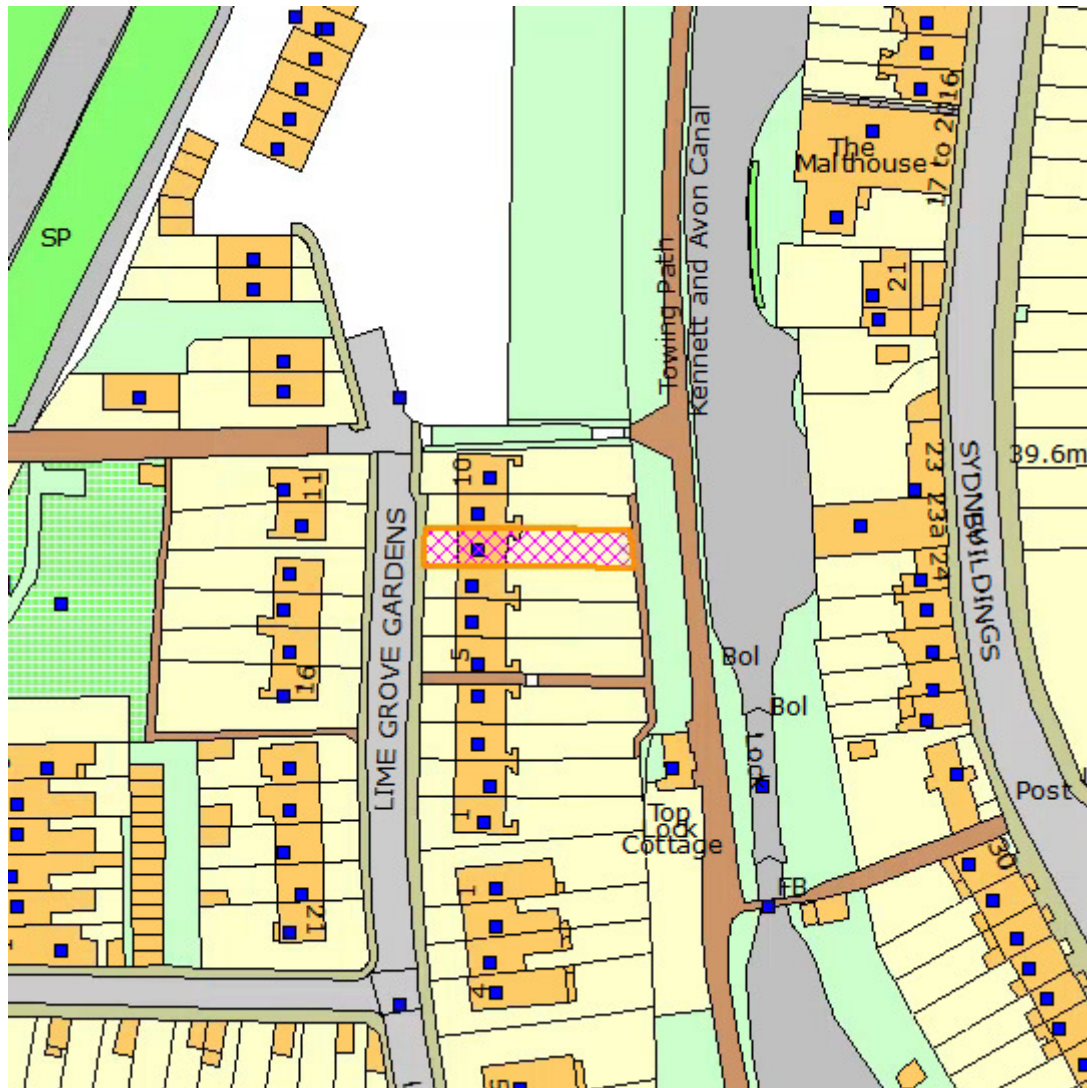
**2 ADVICE NOTE:**

Where a request is made to a Local Planning Authority for written confirmation of compliance with a condition or conditions attached to a planning permission or where a request to discharge conditions is submitted a fee shall be paid to that authority. Details of the fee can be found on the "what happens after permission" pages of the Council's Website. Please send your requests to the Registration Team, Planning Services, Lewis House, Manvers Street, Bath, BA1 1JG. Requests can be made using the 1APP standard form which is available from the Planning Portal at [www.planningportal.gov.uk](http://www.planningportal.gov.uk).

3 This permission is accompanied by an agreement under Section 106 of the Town and Country Planning Act 1990.

4 In determining this application the Local Planning Authority considers it has complied with the aims of paragraphs 186 and 187 of the National Planning Policy Framework. For the reasons given, and expanded upon in a related case officer's report, a positive view of the revised proposals was taken and consent was granted.

**Item No:** 02  
**Application No:** 14/04373/FUL  
**Site Location:** 8 Lime Grove Gardens Bathwick Bath And North East Somerset  
BA2 4HE



**Ward:** Bathwick                      **Parish:** N/A                      **LB Grade:** N/A  
**Ward Members:** Councillor Nicholas Coombes      Councillor David Martin  
**Application Type:** Full Application  
**Proposal:** Erection of a single storey extension providing kitchen and a new second floor dormer  
**Constraints:** Agric Land Class 3b,4,5, Conservation Area, Forest of Avon, Hotspring Protection, MOD Safeguarded Areas, SSSI - Impact Risk Zones, World Heritage Site,  
**Applicant:** Ms Megan Yakely  
**Expiry Date:** 18th November 2014  
**Case Officer:** Stuart Ashford

**REPORT**

## REASON FOR REFERRING THIS APPLICATION TO COMMITTEE

Councillor Martin requested that if the application were to be recommended for approval it be considered by the Development Control Committee concerning issues of potential overdevelopment and loss of amenity issues to neighbouring properties in a conservation area.

### Site Description and Proposal:

No.8 Lime Grove Gardens is a small mid-terrace stone dwelling forming part of a row of six houses. Built in the 1930's each property has a narrow rear curtilage that rises steeply eastwards to meet the canal towpath behind. Rear extensions and rooflights are present on a number of houses along the row. Lime Grove Gardens is close to the historic centre of Bath and the Kennet and Avon Canal. The site falls within the designated local Conservation Area and the World Heritage Site. Behind the terrace lies the small listed building 'Top Lock Cottage' and beyond this across the canal are the listed buildings of Sydney Gardens.

This application proposes two extensions to the property in the form of (1) a rear extension to provide additional living space and (2) a rear flat-roofed dormer to facilitate a loft conversion.

Planning History: 14/01014/FUL: Permit - Erection of single storey outbuilding (not yet implemented to date).

## **SUMMARY OF CONSULTATIONS/REPRESENTATIONS**

### Summary of Consultation/Representations:

Occupants of No.s 5, 6, 7 and 9 Lime Grove Gardens: Object to the proposed scheme. Summarised as:

- Overdevelopment of the plot and the dwelling
- Adverse visual, character and historic impact
- Loss of neighbouring residential amenity through overshadowing and overbearing
- Proposals not in keeping with the dwelling, the terraced row and the streetscene.

Occupant of 42 Sydney Gardens: Object:

- Overdevelopment, precedent and adverse impact on listed buildings.

Bath Preservation Trust: Comment:

- The setting of the canal and listed properties in Sydney Buildings should not be harmed.

Councillor Martin:

- If the case officer is minded to recommend approval, I would like the application to be determined by the Development Control Committee. This is because the

application raises potential overdevelopment and loss of amenity issues to neighbouring properties in a conservation area.

Planning Chair Gerry Curran:

- Agreed that the case should be considered by the Planning Committee

## **POLICIES/LEGISLATION**

The Core Strategy for Bath and North East Somerset was formally adopted by the Council on 10th July 2014. The Core Strategy now forms part of the statutory Development Plan and will be given full weight in the determination of planning applications. The Council's Development Plan now comprises: Core Strategy and Saved Policies in the B&NES Local Plan (2007)

The following policies of the Bath and North East Somerset Core Strategy are relevant to the determination of this application:

B4 - The World Heritage Site and its Setting

The following saved policies of the Bath and North East Local Plan, including minerals and waste policies, adopted October 2007 are also relevant to the determination of this application.

D2 - General Design and public realm considerations

D4 - Townscape considerations

BH6 - Development within or affecting Conservation Areas

The National Planning Policy Framework (NPPF) and the National Planning Practice Guidance (NPPG) are also material considerations. The following sections of the NPPF are of particular relevance:

Section 7: Requiring good design

There is a duty placed on the Council under Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 'In considering whether to grant planning permission for development which affects a listed building or its setting' to 'have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.'

There is a duty placed on the Council under Section 72 of the Planning (Listed Buildings and Conservation Areas) Act to pay special attention to the preservation or enhancement of the character of the surrounding conservation area.

## **OFFICER ASSESSMENT**

A number of objections have been received from several neighbouring properties on the same terrace regarding unsympathetic design, loss of amenity and adverse heritage and historic building impacts.

The proposed dormer and the extension are therefore each considered in terms of their (1) design and character impact; (2) neighbour amenity impact and (3) wider settings impact (Conservation Area / World Heritage Site).

In 2014 permission was granted for a rear single-storey detached outbuilding. To date this has yet to be implemented. A number of the objections received make references to issues concerning that case and the decision-making process. However, this report considers this application and the relevant merits, considerations and issues.

#### (1) Design and Character Impact:

A small existing lean-to rear extension is to be demolished to make way for a replacement. The proposed extension would have a height of 3 metres, a width of 5.4 metres and a projection of 3.5 metres. These dimensions are considered proportionate, subservient and acceptable in size and scale. The proposed design, although contemporary in style and fenestration, is also acceptable and it will not result in an adverse visual impact or character harm to the dwelling, the row or the streetscene.

The expanded footprint can be accommodated within the curtilage without adverse impact to the current and future amenity usage. Although the choice of walling materials does not match the existing stone the proposed boards are acceptable providing representative samples and colours are agreed via a planning condition.

Although the properties are not listed they do fall within the designated Conservation Area and the World Heritage Site. Dormer windows are not specifically prohibited in principle however and they can be considered on their individual merit, design and amenity impacts.

The dormer initially proposed raised officer concerns regarding its unsympathetic size and scale. A revised and reduced scheme was then submitted. This reduced the width to 4 metres with a height of 1 metre. It is now considered to be sufficiently subservient in size, scale and siting. It will sit below the ridge, above the eaves and be set-in in from both neighbouring roof boundaries.

It will sit centrally and reflect the fenestration layout below and it will not result in unacceptable visual or character harm to the dwelling or the streetscape. Although it will alter the profile of the existing terraced roofscape it will not appear strikingly discordant or incongruous. The same materials as the extension are proposed and similarly, a condition should be applied in order to obtain the most sympathetic visual match.

#### (2) Neighbour Amenity Impact:

The proposed extension is not quite full width and will sit just inside each boundary separation. It's slight degree of set-back, single-storey nature and acceptable dimensions ensure no physical overbearing impacts either side. No side windows are proposed and the rear windows will only offer existing and restricted views. Therefore no adverse overlooking or loss of privacy issues will result to either neighbour.

The neighbouring property No.7 is situated directly to the south and it will continue to receive its current level of eastern and southern light without any overshadowing impacts.

No.9 is situated to the north and has a rear conservatory sited the other side of the tall wall. It is possible that there may be a small reduction in the amount of southern light reaching the neighbouring conservatory.

The additional length (0.5m over that allowed without planning permission) may also result in some overshadowing of the curtilage for a short part of the day. However, neither the height nor the length of the proposed extension are considered to result in an impact constituting an unacceptable level of harm through loss of neighbouring residential amenity.

The small scale, centrally sited dormer will not result in any overbearing, overshadowing or loss of light. The dwellings forming this row have a close and compact relationship with cross-curtilage views. The proposed dormer windows will not offer any new or intrusive views and no adverse overlooking impacts or loss of privacy will result.

### (3) Wider Setting:

The rear extension is of a relatively small scale and low-level rear-siting with limited visibility outside of the rear curtilages. The dormer itself will have a more pronounced visibility and greater profile. However, as discussed, it of a subservient size and scale and it will be set against the taller ridge of the terraced row in an urban environment.

The rear of the terraced row is well screened by fencing and mature boundary hedging which much restricts views from the canal towpath to the east. Similarly, the path and steps to the north of the row would only allow a partial and distanced glimpse in passing. The modest size and scale of the proposals, their rear-siting and appropriate built context much mitigates any adverse impact. Neither is considered to result in unacceptable harm to the Conservation Area or the World Heritage site or its Setting.

Concerns have been raised about the wider impacts of the dormer on local protected historic buildings and fabric. Top Lock Cottage (listed) to the rear is a small dwelling associated with the listed lock gates. Both are set at a higher land level and distanced by some 40 metres. The listed dwellings of Sydney Gardens are distanced by over 70 metres at the closest point and situated across the canal. Neither development is considered to have an adverse visual or character impact on either listed grouping.

Due consideration has been given to Section 66 of the Planning (Listed Buildings and Conservation Areas) Act in assessing the proposals and the development will not be harmful to heritage assets on or adjoining the site. In addition consideration has been made of Section 72 of the Planning (Listed Buildings and Conservation Areas) Act which requires special attention be paid to the preservation or enhancement of the character of the surrounding conservation area. In this case the scheme is considered to preserve the character and appearance of the conservation area.

### Cumulative impact:

The proposed dormer and kitchen extension constitute proportionate and sympathetic extensions. Taken together the combined increase in volume and the additional footprint are not considered to constitute harmful overdevelopment of the dwelling or the plot either. Objections have been made concerning the cumulative impact including the separate



permitted outbuilding. This element has not yet been constructed and it may not be. If that development does occur however it is still not considered that it will result in unacceptable and harmful disproportionate overdevelopment of the site.

Summary:

Therefore, as both aspects of the proposal are considered acceptable in design and amenity impact terms and neither will result in an unacceptable harm to the Conservation Area or the World Heritage Site, the application is recommended for approval.

## **RECOMMENDATION**

PERMIT

## **CONDITIONS**

1 The development hereby approved shall be begun either before the expiration of three years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved whichever is the latest.

Reason: As required by Section 92 of the Town and Country Planning Act (as amended), and to avoid the accumulation of unimplemented planning permissions.

2 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification) no windows, roof lights or openings, other than those shown on the plans hereby approved, shall be formed in the at any time unless a further planning permission has been granted.

Reason: To safeguard the amenities of adjoining occupiers from overlooking and loss of privacy.

3 No development shall commence until a schedule of materials and finishes, and samples of the materials to be used in the construction of the external surfaces, including roofs, have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out only in accordance with the details so approved.

Reason: In the interests of the appearance of the development and the surrounding area.

4 The proposed dormer window serving the bathroom shall be glazed with obscure glass and permanently retained as such.

Reason: To safeguard the amenities of adjoining occupiers from overlooking and loss of privacy.

5 The development/works hereby permitted shall only be implemented in accordance with the plans as set out in the plans list below.

Reason: To define the terms and extent of the permission.

**PLANS LIST:**

Proposed Plans: Site Plan and Drawing numbers - 273 S 010, 273 S 100, 273 S 101, 273 S 300, 273 S 301, 273.P.111 P2, 273.P.210 P2, 273.P.310 P2, 273.P.311 P2.

In determining this application the Local Planning Authority considers it has complied with the aims of paragraphs 186 and 187 of the National Planning Policy Framework. For the reasons given, and expanded upon in the delegated report, a positive view of the submitted proposals was taken and permission was granted.